IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Khumba Ram & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Revision No. 734/2005 against the order dated 15-6-2005 passed by the Additional Sessions Judge No.3, Jodhpur, in Criminal Revision No. 28/2005.

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Date of Order: April 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pradeep Shah, for the petitioners.
Mr. JPS Chaudhary, Public Prosecutor for the State.
Mr. B.K. Mehar, for non-petitioner No.2.

BY THE COURT:

By the instant criminal revision under Section 397(1) of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have assailed the order dated 15.6.2005passed by the Additional Sessions Judge No.3, Jodhpur (for short, "the Revisional Court" hereafter) in Criminal Revision No. 28/2005, whereby the Revisional Court set aside theorder dated 1-2-2005 passed by the Judicial Magistrate, Balesar, district Jodhpur (for short, "the trial Court" hereinafter) accepted the Final Report No. 25/2000 arising out of FIR No.81/2000, Police Station, Balesar, and dismissed the protest petition filed

by the non-petitioner No.2.

I have heard learned counsel for the parties and perused the order impugned.

By the impugned order, the Revisioinal Court, while partly allowing the revision petition filed by the non-petitioner No.2, directed the trial to take cognizance of the offence under Section 3 (1) (x) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act" hereinafter). Learned counsel for the petitioners submit that the order of the Revisional Court directing the trial Court to take cognizance of the offence is beyond the scope of Section 398 of the Code.

Section 398 of the Code reads as under:-

> "Power to order inquiry.- On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Sec. 204, or into the case of any person accused of an offence who has been discharged:
>
> Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

Learned counsel for the petitioners further submits

that the Revisional Court cannot the trial Court to make further inquiry into a case of any person who has been discharged unless such person had an opportunity of showing cause why such a direction should not be made. Learned counsel for the non-petitioner No.2 failed to controvert the contention raised by the learned counsel for the petitioners.

In M/s. Micro Marbles (P) Ltd, Chittorgarh Vs. State of Rajasthan & Anr., S.B. Criminal Revision Petition No. 720/2004 etc. etc. , decided on 4-4-2005, this Court held that the Revisional Court, while exercising the power under Section 397 of the Code, can direct the trial Court to proceed to hold "further inquiry" and pass a fresh order. It was also held that "further inquiry" would mean re-consideration of the existing material.

In Lalita (Smt.) Vs. State of Rajasthan & Anr., 2004 (2) R.Cr.D. 545 (Raj.), the trial Court dismissed the complaint and the Revisional Court setting aside the order of the trial Court, directed to take cognizance of the offence. While setting aside the revisional order, this Court observed that in view of the provisions of Section 398 of the Code, the revisional court could have only directed for passing of fresh order after further inquiry. Explaining the means of "further inquiry", this Court held that further inquiry only means re-consideation of the existing evidence.

Similar view was taken by this Court in Ramsingh & ors. Vs. State of Rajasthan, 2003 WLC (Raj.) U.C. 563.

In view of the above discussion, the order impugned of the Revisional Court is beyond the scope of Section 398 of the Code and, therefore, cannot be sustained and liable to be set aside.

Consequently, the revision petition is allowed. The impugned order dated 15-6-2005 passed by the Additional Sessions Judge No.3, Jodhpur in Criminal Revision No. 28/2005, to the extend of directing the trial Court to take cognizance is set aside. The matter is remanded to the trial Court to pass a fresh order after further inquiry. It is made clear that "further inquiry" would mean re-consideration of the existing evidence. The stay petition stands disposed of.

(H.R. PANWAR), J.

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